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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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6

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 10/26/95

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), ~~or thirty days~~, which ever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-3,5 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 1-3,5 is/are rejected.
☐ Claim(s) _____ is/are objected to.
☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
☐ Interview Summary, PTO-413
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants admission of the prior art as evidenced by Tenner et al, further in view of Esty ('524), Reference N (Europ. '963), Kramer ('858), Yuen ('670), Reference L (Fre. '649), Plakas ('860), Brumley ('603), Fear ('733), Jenson ('273), Wolf ('468) and Clement ('123) for the reasons fully and clearly detailed in the Office action mailed 7/22/98, paper no. 4.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Jensen ('780) for the reasons given in the Office action mailed 7/22/98, paper no. 4.

Applicant's arguments filed October 26, 1998 have been fully considered but they are not persuasive.

Applicant's urgings are directed to limitations not found in the claims. The claims are not directed to a method of food preportioning. The claims are directed to a bag that is capable of being used in such a method. This is all claim 1 positively recites in this regard. The bag is considered to be empty with the process language being statements of intended use. However, even if the claims did positively recite a food in the bag, the urgings would still not be

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convincing. A food in a bag is just that - food in a bag. Whether this food would have been previously preportioned or not would be irrelevant to an article claim. The food could be newly made without any preportioning or the entire amount of prepared food that is not consumed. The issue of preportioning is also not convincing since applicant's admission of the prior art discloses it is conventional to divide leftover prepared food into individual bags so that applicant is not the first to perform this operation. Applicant provides the indicia so that one can indicate either a packaging date or a "use by" date. This information would be appropriate whether the food was preportioned or not. As detailed in the first Office action, the art is replete with examples of packaging wherein the user of the package because of the indicia thereon is given choices to communicate to others or himself various messages including time concepts (e.g. the date of opening a container or the date of filling a container). Since applicants admission of the prior art as well as Tenner et al disclose a day of the week printed on a bag, to print all the days of the week on a bag so that the specific day can be indicated would have been obvious in view of the art taken as a whole which shows packages provided with days (and even months) for selection. Note that applicant's disclosed reason for printing all the days rather than one day is to avoid having to have separate groups of bags for each other by having a universal bag. The art taken as a whole teaches the same concept. By providing a series of days or dates (or other possible non-time choices, as in the case of some of the prior art), one eliminates the need to have separate bags labeled for each choice. The fact that the day is displayed in a block and is a different color is seen to have been an obvious matter of design. Note that applicant's admission of the prior

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art acknowledges that the prior art labels were color coded. To therefore print each day in a different color would further have been obvious since color coding was conventional.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Mr. Weinstein at telephone number (703) 308-0650.

Mr. Weinstein/om
March 15, 1999
March 24, 1999

Steven Weinstein
STEVEN WEINSTEIN
PRIMARY EXAMINER
ART UNIT 122 1761
3/25/99